

The R&R provided ten days for written objections, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. The R&R specifically advised that “[f]ailure to file timely objections may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals.” (R&R 22.) No objections have been filed.

DISCUSSION

“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). Upon review and analysis, the Court finds no clear error and agrees with Magistrate Judge Dolinger’s determinations that:

1) Plaintiff has stated a claim for retaliation against Officers Rapalee, MacIssaac, Fredricks, Lawfer, Melious, and Weckesser, and Deputy Superintendent Cunningham, because Plaintiff alleges that they took adverse action against him by filing false disciplinary charges and telling other inmates that he was a child molester.

2) Plaintiff has failed to state a claim against Officers Maypes-Rhynders and Sergeants Montegari and Hillman because Plaintiff fails to allege that they took adverse actions against him with the necessary retaliatory intent.

3) Plaintiff adequately pleads a deprivation of his due process rights by Defendants Melious, Lawfer, and Cunningham because Plaintiff alleges that Cunningham, the hearing officer at his disciplinary hearing, was biased, and that Melious and Lawfer filed the allegedly false charges.

4) Plaintiff has properly alleged a claim against Defendants Melious and Lawfer for denial of access to the courts because he claims that they wrongfully took his legal papers, which allegedly resulted in Plaintiff losing a lawsuit.

5) A ruling on Defendants' immunity defense is premature based only on the pleadings.

Accordingly, the Court accepts and adopts the Report and Recommendation as its opinion. The Defendants' motion to dismiss is GRANTED with respect to Officer Maypes-Rhynders and Sergeant Montegari and Hillman, and DENIED with respect to all other Defendants. The order of reference to Magistrate Judge Dolinger is continual.

Dated: New York, New York
March 31, 2009

SO ORDERED



PAUL A. CROTTY
United States District Judge

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Magistrate Judge Michael H. Dolinger
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